INDEX.

Table Of Cases, Etc.

Authorities—

Statutes—

In The

Supreme Court of the United States

October Term, 1939.

No.

HAROLD H. MOORE, Bankrupt,
Petitioner,

v.

LEONARD HORTON, Trustee in Bankruptcy,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Harold H. Moore, Bankrupt, respectfully shows:

STATEMENT OF THE MATTER INVOLVED.

The petitioner's father, Alanson A. Moore, died in Detroit in 1928 (R. 14). By his will he gave both real estate and personal property to trustees, in trust to pay

the income to his widow for life, with advances of some or all of the principal to the widow as the trustees might deem proper "for her comfortable care and support, and in order to enable her to continue in her present station in life" (R. 10). The will directed that upon the widow's death the trustees were to pay over one-half of anything remaining in the trust to the petitioner, if he were then living; otherwise such share was to go to others (R. 10-11). The trust property was located in Michigan (R. 26-30).

On March 12, 1936, while the widow was still living, the petitioner was adjudicated bankrupt (R. 1, 6). In his schedules he disclosed his expectancy under the trust, but averred that it was not such an interest as would pass to his trustee in bankruptcy (R. 6, 13). The petitioner was granted his discharge on April 19, 1937 (R. 1). The widow died November 19, 1938 (R. 22).

In the course of the bankruptcy proceedings the Referee ruled that the petitioner's expectancy in such trust was an asset for the benefit of creditors, and ordered it sold (R. 14). The District Court (O'Brien, J.) reversed the Referee's ruling; the opinion is not officially reported, but it is printed in the Record, pages 34-39. The District Judge held that under the Michigan law the bankrupt had only a future contingent interest in the trust corpus, of which the local law permitted no present transfer, though the bankrupt might contract to transfer it potentially, if and when he came into its enjoyment; and by authority of *In re Martin (C. C. A. 6, 1931), 47 F. (2nd) 498,* and *Suskin & Berry, Inc., v. Rumley (C. C. A. 4, 1930), 37 F. (2d) 304,* he determined that the Bankruptcy Act did not transfer such an interest to the trustee in bankruptcy. The court found as a fact:

"Bankrupt's father died in 1928. * * * His

primary duty and wish was to provide for his widow during her lifetime. Actually, she survived him ten years. In the meantime, his trust estate has felt the effects of the depression; its present nature and extent is indicated by bankrupt's petition to stay proceedings pending determination of his petition for review of the referee's order. When he was adjudicated a bankrupt in March, 1936, two years and eight months before his mother's death, he could not use his interest in his father's estate to meet his obligations, and it was then, of course, uncertain whether he would survive his mother and thus become vested with an interest which he could thus use. An examination of the asset items will lead to the conclusion that no one would have purchased bankrupt's contingent interest in them except as a gamble and at a greatly sacrificed price. The decisions applying the Bankruptcy Act, particularly those above cited, establish that it was not the intention that an unfortunate debtor must sacrifice such a paternal gift in order to have the benefit of the Bankruptcy Act" (R. 38).

The Circuit Court of Appeals for the Sixth Circuit (Hicks, Simons and Hamilton, JJ.) reversed the District Court's ruling (R. 45). The opinion is reported in 110 *F. (2d) 189*, and in *42 A. B. R. 485*, and is printed in the Record, pages 46-49. Such opinion was to the effect that the bankrupt's interest was a "contingent estate" and alienable by virtue of a Michigan statute; and the court held that the Bankruptcy Act worked a transfer of the bankrupt's interest to his trustee, citing *McArthur v. Scott, 113 U. S. 340, 28 L. Ed. 1015*, and *Pollack v. Meyer Bros. Drug Company (C. C. A. 8, 1916), 233 F. 861.* A motion for rehearing was denied without opinion (R. 77).

The petitioner believes that such decision of the Circuit Court of Appeals was erroneous, and that the District Court's decision was correct.

After the petitioner was discharged in bankruptcy, and after the widow's death, the testamentary trustees turned over to the petitioner, as his half of what remained in the trust, real estate of about $15,000.00 assessed value, also certain shares of unlisted stock of uncertain value.

JURISDICTION.

The petitioner invokes the jurisdiction of this court under the Act of February 13, 1925, as amended *(28 U. S. C. A. 347, 350)*. The judgment of the Circuit Court of Appeals was entered March 15, 1940 (R. 45). A petition for rehearing, seasonably filed and entertained by that court, was denied June 27, 1940 (R. 77). The present petition is filed prior to September 27, 1940.

QUESTIONS PRESENTED.

1. Was the petitioner's interest in the trust, as to the real estate and as to the personal property, transferable or subject to levy under the local law of Michigan; and in deciding that it was, both as to the real estate and as to the personal property, did not the Circuit Court of Appeals decide an important question of local law in a way in conflict with applicable local decisions?

2. Was the petitioner's expectancy under his father's trust "property" within the meaning of Section 70a (5) of the Bankruptcy Act *(11 U. S. C. A. 110a)*; and in deciding that it was, did not the Circuit Court of Appeals decide an important federal question in a way in conflict with the applicable decisions of this court, and of other Circuit Courts of Appeals?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The Circuit Court of Appeals failed to follow the local property law as announced by the local courts in *Hadley v. Henderson, 214 Mich. 157, 183 N. W. 75,* and *In re Coots, 253 Mich. 208, 234 N. W. 141.*

2. The Circuit Court of Appeals undertook to dispose of the *cestui's* interest in this trust as if such interest was real estate. It overlooked a local statute (C. L. 1929, Sec. 12982, Stat. Ann. 26.66) by which the *cestui* of a real estate trust no longer takes any real estate interest.

3. The Circuit Court of Appeals has disposed of corporation stock by following a local statute which relates to real estate only. *Dolby v. State Highway Commissioner, 283 Mich. 609 at 620, 278 N. W. 694 at 698.*

4. The Circuit Court of Appeals based its decision on a Michigan statute relating to the alienation of future interests (C. L. 1929, Sec. 12955; Stat. Ann. 26.35) but gave to that statute a construction at variance with the construction given by the Supreme Court of Michigan; *In re Coots, supra.*

5. Similar statutes are in force in many other jurisdictions, so that a new construction thereof by a Federal Court is of more than local importance.

6. The Federal and state cases are in confusion on the question of whether a trust interest, subject only to *in futuro* transfer "by estoppel" is transferable in such a sense as to pass to a trustee in bankruptcy; *3 Simes on Future Interests, Sec. 738.* Compare on the one hand, *Suskin & Berry v. Rumley (C. C. A. 4, 1930), 32 F. (2d) 304,* and *Luttgen v. Tiffany, 37 R. I. 416, 93 Atl. 182;* and

on the other hand *In re Landis (C. C. A. 7, 1930), 41 F. (2d) 700,* and *Earle v. Maxwell, 86 S. C. 1, 67 S. E. 962.*

7. It is the settled Federal rule that the bankrupt's expectancy is not "property" within the meaning of Section 70a (5) of the Bankruptcy Act, 11 U. S. C. A. 110a (5), where it depends on the discretion of others whether the bankrupt will ever enjoy the estate: *Nichols v. Eaton, 1 Otto 716, 23 L. Ed. 254; In re Harper (C. C. A. 2, 1907), 155 F. 105,* and *In re Wetmore (C. C. A. 3, 1901), 108 F. 520.* The decision below is in conflict with these authorities. The conflicting views of the various Federal Courts are causing hardship and uncertainty. An authoritative decision by this court is urgently needed.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this court directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding that court to certify and send up to this court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, "No. 8403, *In the Matter of Harold H. Moore, Bankrupt; Leonard Horton, Trustee, Appellant, v. Harold H. Moore, Bankrupt, Appellee*"; and that the said judgment of that court may be reversed by this court; and that your petitioner may have such other and further relief in the premises as to this court may seem meet and just.

Dated Detroit, Mich., September 12, 1940.

HAROLD H. MOORE,
By RICHARD FORD,
Counsel for Petitioner.

MERLIN WILEY,
HOWARD STREETER,
LEON R. JONES,
Of Counsel.